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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

THE COYOTE VALLEY BAND OF POMO INDIANS OF CALIFORNIA; and THE ROUND VALLEY INDIAN TRIBES OF CALIFORNIA, **Plaintiffs,** **v.** **UNITED STATES DEPARTMENT OF TRANSPORTATION; ANTHONY FOXX in his official capacity as the Secretary of the Department of Transportation; FEDERAL HIGHWAY ADMINISTRATION; GREGORY NADEAU in his official capacity as the Acting Administrator of the Federal Highway Administration; CALIFORNIA DEPARTMENT OF TRANSPORTATION; MALCOLM DOUGHERTY in his official capacity as Director of the California Department of Transportation,** **Defendants.**	**Case No. 3:15-cv-04987-JSW** ORDER GRANTING AS MODIFIED **STIPULATION AND ~~[PROPOSED]~~ ORDER CONCERNING ADMINISTRATIVE RECORD DOCUMENTS TO BE PLACED UNDER SEAL** AND TERMINATION MOTION TO SEAL (54) **Location: Courtroom 5** **Judge: Hon. Jeffrey S. White**

WHEREAS, Defendants California Department of Transportation and Malcolm Dougherty ("Caltrans") lodged the Administrative Record relevant to this action with the court on July 7, 2016 (ECF 55);

WHEREAS, Caltrans believes portions of the Administrative Record contain information regarding the nature and location of sensitive resources recognized as confidential under federal and California law, including the Archaeological Resources Protection Act, the National Historic Preservation Act, the California Environmental Quality Act, and the California Public Records Act (*see, e.g.*, 16 U.S.C. § 470hh; 54 U.S.C. §§ 300101, *et seq.*; 36 C.F.R. §§800 *et seq.*; Cal. Gov. Code §§ 6524(r) and 6254.10; 14 C.C.R. 15120);

WHEREAS, on July 7, 2016, to preserve the confidentiality of sensitive information protected by the aforementioned laws, Caltrans filed an administrative motion to lodge certain portions of the Administrative Record under seal (ECF 54);

WHEREAS, on July 11, 2016, Plaintiffs, the Coyote Valley Band of Pomo Indians of California and The Round Valley Indian Tribes of California ("Plaintiffs"), opposed the administrative motion (ECF 56);

WHEREAS, on July 11, 2016, the Court issued an order deferring a ruling on the motion to seal portions of the administrative record (ECF 57);

WHEREAS, the Court's order directed Caltrans to provide Plaintiffs with a particular basis for sealing each document by July 18, 2016, and directed the parties to meet and confer, by no later than July 29, 2016, in an effort to come to an agreement on whether any given document should be filed under seal in its entirety or in part (ECF 57);

WHEREAS, in accordance with the Court's order, Caltrans provided Plaintiffs with a particular basis for sealing each document on July 18, 2016;

WHEREAS, in Caltrans's document sent on July 18, 2016 which identifies Caltrans' basis for sealing each document, Caltrans identified a subset of "519 Documents" for which Caltrans stated that "Upon further review, it is unclear whether or not this document needs to be filed under seal. Caltrans will meet and confer with Plaintiffs to discuss."

WHEREAS, on July 20, 2016, Caltrans sent correspondence to Plaintiffs identifying 57 additional documents in the Administrative Record containing information that Caltrans believes should be under seal pursuant to the same laws identified in the its administrative motion to lodge portions of the Administrative Record under seal (ECF 54), along with a particular basis for sealing each of the additional documents (the "57 Additional Documents"); the attorneys representing the parties exchanged e-mail correspondence regarding the Administrative Record throughout the week of July 25, 2016, and met and conferred by teleconference call on July 29, 2016, and again on August 3, 2016;

WHEREAS, on July 28, 2016, pursuant to Plaintiffs' request, Caltrans provided copies of the 57 Additional Documents with the confidential information in each document specifically highlighted;

WHEREAS, the attorneys representing the parties exchanged e-mail correspondence regarding the Administrative Record throughout the week of July 25, 2016, and met and conferred by teleconference on July 29, 2016, August 3, 2016, and August 5, 2016;

WHEREAS, on August 22, 2016, the parties, by and through their attorneys, stipulated, through a "Stipulation Regarding Administrative Record and For Extension of Time to Meet and Confer" that they would continue to meet and confer regarding the documents in the Administrative Record that are currently under temporary seal, in order to determine whether the documents should remain under seal in whole or in part, and agree that they will file a joint supplemental motion to seal once agreement is reached (ECF 61);

WHEREAS, in the same stipulation filed on August 22, 2016, the parties, by and through their respective counsel, agreed that the "57 Additional Documents" shall be placed under temporary seal until the parties come to an agreement regarding placements of these documents, in whole or in part, under permanent seal (ECF 61);

WHEREAS, in the same stipulation filed on August 22, 2016, the parties, by and through their respective counsel, agreed that "[a]ny order sought by the parties to permanently seal Administrative Record documents shall only prevent access to the Court's record in this case to those documents placed under seal, and shall not otherwise affect any legal right the parties may have to utilize the documents," and that "[a]ny disclosure by Plaintiffs of any information from the Administrative Record will be done of Plaintiffs' own accord, and shall not be construed as a violation of, or otherwise reflect upon Caltrans' compliance with, the aforementioned laws protecting confidentiality of such information" (ECF 61);

WHEREAS, on August 22, 2016, the Court approved the parties' Stipulation Regarding Administrative Record and Extension of Time to Meet and Confer (Doc 63);

WHEREAS, Caltrans stated that it brought the motion to file portions of the Administrative Record under seal to comply with laws on confidentiality of information regarding the nature and/or location of sensitive resources, and not to prevent Plaintiffs from utilizing the Administrative Record documents for their own purposes to the extent legally permissible;

WHEREAS, currently there is no express or implied confidentiality agreement between Plaintiffs and Caltrans concerning information from the Administrative Record;

WHEREAS, the parties have met and conferred, and have reached agreement as to whether each document in the Administrative Record should remain under seal;

NOW THEREFORE, by and through their undersigned counsel, the parties do hereby stipulate as follows with respect to the status and/or sealing of all documents in the Administrative Record:

1. An updated unsealed Administrative Record, in the form of .PDF files on compact discs, shall be lodged in the court record for this case, and shall replace the compact discs lodged on August 22, 2016 (ECF 61). The parties agree that the following specified documents shall remain excluded from the updated, unsealed Administrative Record:

Attachment A—Documents to Remain Under Seal: identifies by number some of those documents which Caltrans listed in ECF 54-2 as documents it believes contain information regarding the nature and location of sensitive resources recognized as confidential under federal or California law, including the Archaeological Resources Protection Act, the National Historic Preservation Act, the California Environmental Quality Act, and the California Public Records Act. Attachment A does not include those documents previously listed in ECF 54-2, and which were subsequently identified on July 18, 2016 as "519 documents," as identified in Attachment B below.

Attachment B—Subset of 519 Documents to Remain Under Seal: identifies by number a subset of those "519 documents" which Caltrans identified on July 18, 2016 for which Caltrans stated that "Upon further review, it is unclear whether or not this document needs to be filed under seal. Caltrans will meet and confer with Plaintiffs to discuss," and which the parties agree may be placed under seal as documents which Caltrans believes contain information regarding the nature and location of sensitive resources recognized as confidential under federal or California law, including the Archaeological Resources Protection Act, the National Historic Preservation Act, the California Environmental Quality Act, and the California Public Records Act.

Attachment C—57 Additional Documents to Remain Under Seal: identifies by number the "57 Additional Documents," placed under temporary seal by the Court on August 22, 2016, redacted portions of which shall remain under seal (ECF 63).

2. The Order approving this Stipulation and placing the above-referenced Administrative Record documents under seal shall only prevent public access to the Court's record in this case to those documents placed under seal, and shall not otherwise affect any legal right the parties may have to utilize the documents.

3. Any disclosure by Plaintiffs outside of this case of any documents identified above will be done of Plaintiffs' own accord, and shall not be construed as a violation of, or otherwise reflect upon Caltrans' compliance with, the aforementioned laws requiring Caltrans to protect the confidentiality of such information.

Dated: March 24, 2017

COTCHETT, PITRE & McCARTHY, LLP

By: *__/s/ Philip L. Gregory__*
PHILIP L. GREGORY
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Dated: March 24, 2017

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~~[PROPOSED]~~ ORDER

IT IS HEREBY ORDERED THAT, pursuant to stipulation of the parties:

1. All documents listed in Attachments A and B to ~~this Stipulation and Order~~ Docket No. 96, and portions of documents listed in Attachment C, redacted in accordance with previous agreement of the parties, shall remain under seal. All references to Attachments A, B, and C in this Order refer to the attachments included with Docket No. 96.

2. An updated unsealed Administrative Record, in the form of .PDF files on compact discs, and excluding the documents listed in Attachments A and B and redacted portions of documents listed in Attachment C, shall be lodged in the court record for this case on or before **May 12, 2017**.

3. This Order shall not affect any legal right the parties may have to utilize the Administrative Record documents. If a party seeks to file a document that has been filed under seal by this Order as an exhibit to a motion, that party shall file an an administrative motion to seal that sets forth the specific statute or other legal basis on which the party relies to seal any given document.

IT IS SO ORDERED.

Dated: March 27, 2017

HON. JEFFREY S. WHITE
United States District Judge